106TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { REPORT 106–344

EXTENSION OF EXPIRING PROVISIONS

SEPTEMBER 28, 1999.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ARCHER, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2923]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2923) to amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the nonrefundable personal credits against regular tax liability, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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69–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—EXTENSION OF EXPIRING PROVISIONS

SEC. 101. NONREFUNDABLE PERSONAL CREDITS FULLY ALLOWED AGAINST REGULAR TAX LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 26 of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax) is amended to read as follows:

"(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's regular tax liability for the taxable year.".

(b) CHILD CREDIT.—Subsection (d) of section 24 of such Code is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

SEC. 102. RESEARCH CREDIT.

(a) EXTENSION.—

(1) IN GENERAL.—Paragraph (1) of section 41(h) of the Internal Revenue Code of 1986 (relating to termination) is amended—

(A) by striking "June 30, 1999" and inserting "June 30, 2004", and

(B) by striking the material following subparagraph (B).

(2) TECHNICAL AMENDMENT.—Subparagraph (D) of section 45C(b)(1) of such Code is amended by striking "June 30, 1999" and inserting "June 30, 2004".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts paid or incurred after June 30, 1999.

(b) INCREASE IN PERCENTAGES UNDER ALTERNATIVE INCREMENTAL CREDIT.—

(1) IN GENERAL.—Subparagraph (A) of section 41(c)(4) of such Code is amended—

(A) by striking "1.65 percent" and inserting "2.65 percent",

(B) by striking "2.2 percent" and inserting "3.2 percent", and

(C) by striking "2.75 percent" and inserting "3.75 percent".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after June 30, 1999.

(c) SPECIAL RULE.—

(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, the credit determined under section 41 of such Code which is otherwise allowable under such Code and which is attributable to the suspension period shall not be taken into account prior to October 1, 2000. On or after such date, such credit may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means allowed by such Code.

(2) SUSPENSION PERIOD.—For purposes of this subsection, the suspension period is the period beginning on July 1, 1999, and ending on September 30, 2000.

(3) EXPEDITED REFUNDS.—

(A) IN GENERAL.—If there is an overpayment of tax with respect to a taxable year by reason of paragraph (1), the taxpayer may file an application for a tentative refund of such overpayment. Such application shall be in such manner and form, and contain such information, as the Secretary may prescribe.

(B) DEADLINE FOR APPLICATIONS.—Subparagraph (A) shall apply only to applications filed before October 1, 2001.

(C) ALLOWANCE OF ADJUSTMENTS.—Not later than 90 days after the date on which an application is filed under this paragraph, the Secretary shall—

(i) review the application,

(ii) determine the amount of the overpayment, and

(iii) apply, credit, or refund such overpayment,

in a manner similar to the manner provided in section 6411(b) of such Code.

(D) CONSOLIDATED RETURNS.—The provisions of section 6411(c) of such Code shall apply to an adjustment under this paragraph in such manner as the Secretary may provide.

(4) CREDIT ATTRIBUTABLE TO SUSPENSION PERIOD.—

(A) IN GENERAL.—For purposes of this subsection, in the case of a taxable year which includes a portion of the suspension period, the amount of credit determined under section 41 of such Code for such taxable year which is attributable to such period is the amount which bears the same ratio to the amount of credit determined under such section 41 for such taxable year as the number of months in the suspension period which are during such taxable year bears to the number of months in such taxable year.

(B) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of such Code for any period before July 1, 1999, with respect to any underpayment of tax imposed by such Code to the extent such underpayment was created or increased by reason of subparagraph (A).

(5) SECRETARY.—For purposes of this subsection, the term "Secretary" means the Secretary of the Treasury (or such Secretary's delegate).

SEC. 103. SUBPART F EXEMPTION FOR ACTIVE FINANCING INCOME.

(a) IN GENERAL.—Sections 953(e)(10) and 954(h)(9) of the Internal Revenue Code of 1986 (relating to application) are each amended—

(1) by striking "the first taxable year" and inserting "taxable years",

(2) by striking "January 1, 2000" and inserting "January 1, 2005", and

(3) by striking "within which such" and inserting "within which any such".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 104. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR MARGINAL PRODUCTION.

(a) IN GENERAL.—Subparagraph (H) of section 613A(c)(6) of the Internal Revenue Code of 1986 (relating to temporary suspension of taxable limit with respect to marginal production) is amended by striking "January 1, 2000" and inserting "January 1, 2005".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 105. WORK OPPORTUNITY CREDIT AND WELFARE-TO-WORK CREDIT.

(a) TEMPORARY EXTENSION.—Sections 51(c)(4)(B) and 51A(f) of the Internal Revenue Code of 1986 (relating to termination) are each amended by striking "June 30, 1999" and inserting "December 31, 2001".

(b) CLARIFICATION OF FIRST YEAR OF EMPLOYMENT.—Paragraph (2) of section 51(i) of such Code is amended by striking "during which he was not a member of a targeted group".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after June 30, 1999.

TITLE II—OTHER TIME-SENSITIVE PROVISIONS

SEC. 201. ADVANCE PRICING AGREEMENTS TREATED AS CONFIDENTIAL TAXPAYER INFORMATION.

(a) IN GENERAL.—

(1) TREATMENT AS RETURN INFORMATION.—Paragraph (2) of section 6103(b) of the Internal Revenue Code of 1986 (defining return information) is amended by striking "and" at the end of subparagraph (A), by inserting "and" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

"(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement,".

(2) EXCEPTION FROM PUBLIC INSPECTION AS WRITTEN DETERMINATION.—Paragraph (1) of section 6110(b) of such Code (defining written determination) is amended by adding at the end the following new sentence: "Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(b) ANNUAL REPORT REGARDING ADVANCE PRICING AGREEMENTS.—

(1) IN GENERAL.—Not later than 90 days after the end of each calendar year, the Secretary of the Treasury shall prepare and publish a report regarding advance pricing agreements.

(2) CONTENTS OF REPORT.—The report shall include the following for the calendar year to which such report relates:

(A) Information about the structure, composition, and operation of the advance pricing agreement program office.

(B) A copy of each model advance pricing agreement.

(C) The number of—

(i) applications filed during such calendar year for advanced pricing agreements;

(ii) advance pricing agreements executed cumulatively to date and during such calendar year;

(iii) renewals of advanced pricing agreements issued;

(iv) pending requests for advance pricing agreements;

(v) pending renewals of advance pricing agreements;

(vi) for each of the items in clauses (ii) through (v), the number that are unilateral, bilateral, and multilateral, respectively;

(vii) advance pricing agreements revoked or canceled, and the number of withdrawals from the advance pricing agreement program; and

(viii) advanced pricing agreements finalized or renewed by industry.

(D) General descriptions of—

(i) the nature of the relationships between the related organizations, trades, or businesses covered by advance pricing agreements;

(ii) the covered transactions and the business functions performed and risks assumed by such organizations, trades, or businesses;

(iii) the related organizations, trades, or businesses whose prices or results are tested to determine compliance with transfer pricing methodologies prescribed in advanced pricing agreements;

(iv) methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies;

(v) critical assumptions made and sources of comparables used;

(vi) comparable selection criteria and the rationale used in determining such criteria;

(vii) the nature of adjustments to comparables or tested parties;

(viii) the nature of any ranges agreed to, including information regarding when no range was used and why, when interquartile ranges were used, and when there was a statistical narrowing of the comparables;

(ix) adjustment mechanisms provided to rectify results that fall outside of the agreed upon advance pricing agreement range;

(x) the various term lengths for advance pricing agreements, including rollback years, and the number of advance pricing agreements with each such term length;

(xi) the nature of documentation required; and

(xii) approaches for sharing of currency or other risks.

(E) Statistics regarding the amount of time taken to complete new and renewal advance pricing agreements.

(F) A detailed description of the Secretary of the Treasury's efforts to ensure compliance with existing advance pricing agreements.

(3) CONFIDENTIALITY.—The reports required by this subsection shall be treated as authorized by the Internal Revenue Code of 1986 for purposes of section 6103 of such Code, but the reports shall not include information—

(A) which would not be permitted to be disclosed under section 6110(c) of such Code if such report were a written determination as defined in section 6110 of such Code, or

(B) which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(4) FIRST REPORT.—The report for calendar year 1999 shall include prior calendar years after 1990.

(c) REGULATIONS.—The Secretary of the Treasury or the Secretary's delegate shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 6103(b)(2)(C), and the last sentence of section 6110(b)(1), of the Internal Revenue Code of 1986, as added by this section.

SEC. 202. INCLUSION OF CERTAIN VACCINES AGAINST STREPTOCOCCUS PNEUMONIAE TO LIST OF TAXABLE VACCINES.

(a) INCLUSION OF VACCINES.—

(1) IN GENERAL.—Section 4132(a)(1) of the Internal Revenue Code of 1986 (defining taxable vaccine) is amended by adding at the end the following new subparagraph:

"(L) Any conjugate vaccine against streptococcus pneumoniae.".

(2) EFFECTIVE DATE.—

(A) SALES.—The amendment made by this subsection shall apply to vaccine sales beginning on the day after the date on which the Centers for Disease Control makes a final recommendation for routine administration to children of any conjugate vaccine against streptococcus pneumoniae, but shall not take effect if subsection (b) does not take effect.

(B) DELIVERIES.—For purposes of subparagraph (A), in the case of sales on or before the date described in such subparagraph for which delivery is made after such date, the delivery date shall be considered the sale date.

(b) VACCINE TAX AND TRUST FUND AMENDMENTS.—

(1) Sections 1503 and 1504 of the Vaccine Injury Compensation Program Modification Act (and the amendments made by such sections) are hereby repealed.

(2) Subparagraph (A) of section 9510(c)(1) is amended by striking "August 5, 1997" and inserting "October 21, 1998".

(3) The amendments made by this subsection shall take effect as if included in the provisions of the Tax and Trade Relief Extension Act of 1998 to which they relate.

(c) REPORT.—Not later than December 31, 1999, the Comptroller General of the United States shall prepare and submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the operation of the Vaccine Injury Compensation Trust Fund and on the adequacy of such Fund to meet future claims made under the Vaccine Injury Compensation Program.

SEC. 203. AUTHORITY TO POSTPONE CERTAIN TAX-RELATED DEADLINES BY REASON OF Y2K FAILURES.

(a) IN GENERAL.—In the case of a taxpayer determined by the Secretary of the Treasury (or the Secretary's delegate) to be affected by a Y2K failure, the Secretary may disregard a period of up to 90 days in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such taxpayer—

(1) whether any of the acts described in paragraph (1) of section 7508(a) of the Internal Revenue Code of 1986 (without regard to the exceptions in parentheses in subparagraphs (A) and (B)) were performed within the time prescribed therefor, and

(2) the amount of any credit or refund.

(b) APPLICABILITY OF CERTAIN RULES.—For purposes of this section, rules similar to the rules of subsections (b) and (e) of section 7508 of the Internal Revenue Code of 1986 shall apply.

TITLE III—REVENUE OFFSET

SEC. 301. MODIFICATION OF ESTIMATED TAX SAFE HARBOR.

(a) IN GENERAL.—The table contained in clause (i) of section 6654(d)(1)(C) of the Internal Revenue Code of 1986 (relating to limitation on use of preceding year's tax) is amended by striking the item relating to 1999 or 2000 and inserting the following new items:

"1999	108.5
2000	106".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to any installment payment for taxable years beginning after December 31, 1999.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The bill, H.R. 2923, provides needed relief to individuals by allowing nonrefundable personal credits, including the child credit, to offset fully regular tax liability, extends other expiring provisions, and addresses other time-sensitive issues relating to disclosure of advance pricing agreements ("APAs"), inclusion of vaccines against streptococcus in the list of taxable vaccines, and failures to meet certain tax deadlines by reason of Year 2000 failures.

SUMMARY

Extension of expiring provisions

Extension of minimum tax relief for individuals.—Effective for taxable years beginning after December 31, 1998, the provision allows an individual taxpayer to offset the entire regular tax liability (without regard to the minimum tax) by the personal nonrefundable credits and repeals the present-law reduction of the refundable child credit by the amount of an individual's minimum tax.

Extension of research tax credit.—The provision extends the research tax credit generally through June 30, 2004, increases the credit rate under the alternative incremental credit by one percentage point for each step, and provides that research credits attributable to periods after June 30, 1999, and before October 1, 2000, shall not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code before October 1, 2000.

Extend exceptions under Subpart F for active financing income.—The provision extends for five years the present-law temporary exceptions from Subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business. The provision is effective for taxable years of a foreign corporation beginning after December 31, 1999, and before January 1, 2005, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporation end.

Extend suspension of net income limitation on percentage depletion from marginal oil and gas wells.—The provision extends through December 31, 2004, the present-law suspension of a rule limiting percentage depletion deductions of oil and gas independent producers to 100 percent of the net income from the mineral property.

Extend the Work Opportunity Tax Credit.—The provision extends the Work Opportunity Tax Credit for 30 months ("WOTC") (through December 31, 2001) and directs the Secretary of the Treasury to expedite procedures to allow taxpayers to satisfy their WOTC filing requirements by electronic means. Generally, the pro-

vision is effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer on or after July 1, 1999, and before January 1, 2002.

Extend the Welfare-to-Work Tax Credit.—The provision extends the welfare-to-work credit for 30 months (through December 31, 2001). The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2002.

Other time-sensitive provisions

Prohibit disclosure of APAs and APA background files.—The provision confirms that advance pricing agreements ("APAs") and related background information are confidential return information and are not "written determinations" for purposes of the public inspection requirements of section 6110 and requires the Department of Treasury to prepare annually a detailed report regarding APAs and the APA program. The provision is effective upon enactment, such that neither APAs, regardless of when executed, nor their related background files, can be released to the public.

Add certain vaccines against streptococcus pneumoniae to the list of taxable vaccines.—The provision adds conjugate streptococcus pneumoniae vaccines to the list of taxable vaccines, effective for vaccine purchases beginning on the day after the date on which the Centers for Disease Control makes final recommendation for routine administration of the vaccines, and directs the General Accounting Office to report on the Vaccine Injury Compensation Trust Fund not later than December 31, 1999.

Authority to postpone certain tax-related deadlines by reason of Year 2000 failures.—The provision permits the Secretary of the Treasury to postpone certain tax-related deadlines for a period of up to 90 days in the case of a taxpayer determined to be affected by an actual Year 2000 failure.

Revenue offset for fiscal year 2000

Modification of individual estimated tax safe harbor.—For taxable years beginning in 2000, the estimated tax safe harbor for an individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year would be increased to 108.5 percent of the preceding year's liability.

B. Background and Need for Legislation

Certain tax provisions have expired or will expire in 1999. The Committee believes that these provisions should be extended in order for taxpayers to have certainty in applying the provisions and for the Congress to have additional time to review and evaluate the provisions. The proposal will provide tax relief to individual taxpayers by making permanent the provision allowing an individual to offset the entire regular tax liability by the personal nonrefundable credits.

Certain time-sensitive matters also need to be addressed. The bill generally prohibits disclosure of advanced pricing agreements ("APAs"), gives the Secretary of the Treasury authority to provide relief from certain tax deadlines due to Year 2000 failures, and

adds certain vaccines against streptococcus pneumoniae to the list of taxable vaccines.

The bill includes a revenue offset for Fiscal Year 2000.

C. Legislative History

The bill, H.R. 2923, was introduced by Chairman Archer on September 23, 1999. The Committee marked up the bill on September 24, 1999, and approved the bill with the Chairman's amendment in the nature of a substitute by a roll call vote of 23 yeas to 14 nays (with a quorum present). The provisions extending expiring tax provisions, the provision relating to streptococcus pneumoniae, and the provision relating to advanced pricing agreements generally were also included in the conference agreement for H.R. 2488, the "Taxpayer Refund and Relief Act of 1999." [1]

II. EXPLANATION OF THE BILL

TITLE I: EXTENSION OF EXPIRING PROVISIONS

A. Extend Minimum Tax Relief for Individuals (Sec. 101 of the Bill and Secs. 24 and 26 of the Code)

PRESENT LAW

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit, the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, and the D.C. homebuyer's credit). Except for taxable years beginning during 1998, these credits are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. For taxable years beginning during 1998, these credits are allowed to the extent of the full amount of the individual's regular tax (without regard to the tentative minimum tax).

An individual's tentative minimum tax is an amount equal to (1) 26 percent of the first $175,000 ($87,500 in the case of a married individual filing a separate return) of alternative minimum taxable income ("AMTI") in excess of a phased-out exemption amount and (2) 28 percent of the remaining AMTI. The maximum tax rates on net capital gain used in computing the tentative minimum tax are the same as under the regular tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments. The exemption amounts are: (1) $45,000 in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 in the case of other unmarried individuals; and (3) $22,500 in the case of married individuals filing a separate return, estates and trusts. The exemption amounts are phased out by an amount equal to 25 percent of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individ-

[1] H.R. 2488 was vetoed by President Clinton on September 23, 1999.

uals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

For families with three or more qualifying children, a refundable child credit is provided, up to the amount by which the liability for social security taxes exceeds the amount of the earned income credit (sec. 24(d)). For taxable years beginning after 1998, the refundable child credit is reduced by the amount of the individual's minimum tax liability (i.e., the amount by which the tentative minimum tax exceeds the regular tax liability).

REASONS FOR CHANGE

The Committee believes that middle-income families should be able to use the nonrefundable credits without limitation by reason of the minimum tax. This provision will also result in significant simplification.

EXPLANATION OF PROVISION

The provision allows an individual to offset the entire regular tax liability (without regard to the minimum tax) by the personal nonrefundable credits.

The present-law provision that reduces the refundable child credit by the amount of an individual's minimum tax is repealed.

EFFECTIVE DATE

The provisions are effective for taxable years beginning after December 31, 1998.

B. Extension of Research Tax Credit (Sec. 102 of the Bill and Sec. 41 of the Code)

PRESENT LAW

General rule

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceeded its base amount for that year. The research tax credit expired and generally does not apply to amounts paid or incurred after June 30, 1999.

A 20-percent research tax credit also applied to the excess of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit scientific research organizations) over (2) the sum of (a) the greater of two minimum basic research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation. This separate credit computation is commonly referred to as the "university basic research credit" (see sec. 41(e)).

Computation of allowable credit

Except for certain university basic research payments made by corporations, the research tax credit applies only to the extent that the taxpayer's qualified research expenditures for the current taxable year exceed its base amount. The base amount for the current

year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (so-called "start-up firms") are assigned a fixed-base percentage of 3 percent.[2]

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Alternative incremental research credit regime

Taxpayers are allowed to elect an alternative incremental research credit regime. If a taxpayer elects to be subject to this alternative regime, the taxpayer is assigned a three-tiered fixed-base percentage (that is lower than the fixed-base percentage otherwise applicable under present law) and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 1.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1 percent (i.e., the base amount equals 1 percent of the taxpayer's average gross receipts for the four preceding years) but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 2.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of 2 percent. A credit rate of 2.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 2 percent. An election to be subject to this alternative incremental credit regime applies to the taxable year in which the election is made and all subsequent years (in the event that the credit subsequently is extended by Congress) unless revoked with the consent of the Secretary of the Treasury.

Eligible expenditures

Qualified research expenditures eligible for the research tax credit consist of: (1) "in-house" expenses of the taxpayer for wages and supplies attributable to qualified research; (2) certain time-sharing costs for computer use in qualified research; and (3) 65 percent of

[2] A special rule is designed to gradually recompute a start-up firm's fixed-base percentage based on its actual research experience. Under this special rule, a start-up firm will be assigned a fixed-base percentage of 3 percent for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. In the event that the research credit is extended beyond the scheduled expiration date, a start-up firm's fixed-based percentage for its sixth through tenth taxable years after 1993 in which it incurs qualified research expenditures will be a phased-in ratio based on its actual research experience. For all subsequent taxable years, the taxpayer's fixed-based percentage will be its actual ratio of qualified research expenditures to gross receipts for any five years selected by the taxpayer from its fifth through tenth taxable years after 1993 (sec. 41(c)(3)(B)).

amounts paid by the taxpayer for qualified research conducted on the taxpayer's behalf (so-called "contract research expenses").[3]

To be eligible for the credit, the research must not only satisfy the requirements of present-law section 174 but must be undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and must involve a process of experimentation related to functional aspects, performance, reliability, or quality of a business component.

Expenditures attributable to research that is conducted outside the United States do not enter into the credit computation. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

Relation to deduction

Deductions allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year. Taxpayers may alternatively elect to claim a reduced research tax credit amount under section 41 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

REASONS FOR CHANGE

The Committee believes that increasing technological knowledge ultimately will lead to new and better products produced at lower costs. New and better products and lower production costs are the genesis of economic growth. For this reason, the Committee believes it is important to extend the research and experimentation tax credit.

In addition, the Committee believes the alternative incremental credit enacted in 1996 should be strengthened. The alternative incremental research credit was enacted to respond to the changing economic circumstances of many taxpayers which invest heavily in research. However, the Committee believes that, under current law, the alternative incremental research credit provides less of a research incentive than does the regular research and experimentation tax credit. Therefore, the Committee believes it is appropriate to increase the rate of the alternative incremental research credit.

EXPLANATION OF PROVISION

The bill extends the research tax credit for five years, i.e., generally, for the period July 1, 1999, through June 30, 2004.

In addition, the bill increases the credit rate applicable under the alternative incremental research credit one percentage point per

[3] Under a special rule, 75 percent of amounts paid to a research consortium for qualified research is treated as qualified research expenses eligible for the research credit (rather than 65 percent under the general rule under sec. 41(b)(3) governing contract research expenses) if (1) such research consortium is a tax-exempt organization that is described in section 501(c)(3) (other than a private foundation) or section 501(c)(6) and is organized and operated primarily to conduct scientific research, and (2) such qualified research is conducted by the consortium on behalf of the taxpayer and one or more persons not related to the taxpayer.

step, in the following manner: (1) from 1.65 percent to 2.65 percent when a taxpayer's current-year research expenses exceed a base amount of 1 percent but do not exceed a base amount of 1.5 percent; (2) from 2.2 percent to 3.2 percent when a taxpayer's current-year research expenses exceed a base amount of 1.5 percent but do not exceed a base amount of 2 percent; and (3) from 2.75 percent to 3.75 percent when a taxpayer's current-year research expenses exceed a base amount of 2 percent.

Research tax credits that are attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, may not be taken into account in determining any amount required to be paid for any purpose under the Internal Revenue Code prior to October 1, 2000. On or after October 1, 2000, such credits may be taken into account through the filing of an amended return, an application for expedited refund, an adjustment of estimated taxes, or other means that are allowed by the Code.

The amount of research credits that are attributable to any period between July 1, 1999, and September 30, 2000, is determined by multiplying the total research credit for any year that includes a portion of such period, by the ratio of months in such period to the months in the taxable year. For example, assume a calendar year corporation has $800 of credits for both 1999 and 2000. The amount of credits attributable to the period July 1 through December 31, 1999, would be $400,[4] and the amount of credits attributable to the period January 1 through September 30, 2000 would be $600.[5]

In this example, because the taxpayer has research tax credits of $400 attributable to the period July 1, 1999, through December 31, 1999, the taxpayer may not reduce its 1999 liability by that $400. On or after October 1, 2000, the taxpayer may file an amended return to claim the benefit of that $400. Normal rules will apply to such an amended return. The IRS must refund the $400 within 45 days of the date the amended return is filed, or overpayment interest will accrue to the taxpayer from March 15, 2000, the original due date of the 1999 return.

In lieu of filing an amended return, the taxpayer may file an application for a tentative refund of the $400 overpayment under a special expedited refund proceeding similar to that available for the accelerated refund of net operating loss carrybacks. The Secretary is required to process this refund claim within 90 days. Applications to use the special expedited refund proceeding must be filed before October 1, 2001.

Research tax credits that are attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, may not be used to reduce estimated tax payments during this period. For example, assume that the calendar year taxpayer discussed above also has research tax credits equal to $600 for the period January 1, 2000, through September 30, 2000. These credits, along with the $400 of research credits for the period July 1, 1999, through December 31, 1999, may not be taken into account in determining any of the estimated tax payments that are due prior to October 1,

[4] 6/12 X $800.
[5] 9/12 X $800.

2000. If the taxpayer makes an estimated payment for its 200 taxes based on its prior year tax liability, that liability must be determined without regard to the $400 of research credits attributable to the July 1 through December 31, 1999, period. If the taxpayer bases such an estimated payment on the current year's liability, whether or not such liability is annualized, the $600 of research credits attributable to the January 1 through September 30, 2000, period may not be considered in determining current year liability.

In this example, the calendar year taxpayer's first estimated tax payment due on or after October 1, 2000, will be the payment due on December 15, 2000. At that time, the research credits that previously could not be considered may be taken into account. Due to the cumulative nature of the estimated tax system, this may reduce the amount otherwise required to be paid on December 15, 2000. However, the sufficiency of estimated payments due prior to October 1, 2000, must still be determined without regard to the research credits attributable to the period beginning on July 1, 1999, and ending on September 30, 2000, even if that determination occurs on or after October 1, 2000.

EFFECTIVE DATE

The extension of the research credit is effective for qualified research expenditures paid or incurred during the period July 1, 1999, through June 30, 2004. The increase in the credit rate under the alternative incremental research credit is effective for taxable years beginning after June 30, 1999. Estimated tax penalties will be waived for the period before July 1, 1999, with respect to any underpayment that is created by reason of the rule allocating research credits to a period based on the ratio of months in such period to the months in the taxable year.

C. EXTEND EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING INCOME (SEC. 103 OF THE BILL AND SECS. 953 AND 954 OF THE CODE)

PRESENT LAW

Under the subpart F rules, 10-percent U.S. shareholders of a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, foreign personal holding company income and insurance income. In addition, 10-percent U.S. shareholders of a CFC are subject to current inclusion with respect to their shares of the CFC's foreign base company services income (i.e., income derived from services performed for a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and REMICs; (3) net gains from commodities transactions; (4) net

gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other-country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income (Prop. Treas. Reg. sec. 1.953–1(a)).

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business (so-called "active financing income"). These exceptions are applicable only for taxable years beginning in 1999.[6]

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be predominantly engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions. In addition, certain nexus requirements apply, which provide that income derived by a CFC or a qualified business unit ("QBU") of a CFC from transactions with customers is eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Moreover, the exceptions apply to income derived from certain cross border transactions, provided that certain requirements are met. Additional exceptions from foreign personal holding company income apply for certain income derived by a securities dealer within the meaning of section 475 and for gain from the sale of active financing assets.

In the case of insurance, in addition to a temporary exception from foreign personal holding company income for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization, certain temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, additional temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of

[6] Temporary exceptions from the subpart F provisions for certain active financing income applied only for taxable years beginning in 1998. Those exceptions were extended and modified as part of the present-law provision.

certain CFCs or branches with respect to risks located in a country other than the United States, provided that the requirements for these exceptions are met.

REASONS FOR CHANGE

In the Taxpayer Relief Act of 1997, one-year temporary exceptions from foreign personal holding company income were enacted [7] for income from the active conduct of an insurance, banking, financing, or similar business. In the Tax and Trade Relief Extension Act of 1998 (the "1998 Act"),[8] the Congress extended the temporary exceptions for an additional year, with certain modifications designed to treat various types of businesses with active financing income more similarly to each other than did the 1997 provision. The Committee believes that it is appropriate to extend the temporary exceptions, as modified in the 1998 Act, for another five years.

EXPLANATION OF PROVISION

The bill extends for five years the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and insurance income for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business.

EFFECTIVE DATE

The provision is effective for taxable years of a foreign corporation beginning after December 31, 1999, and before January 1, 2005, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporation end.

D. EXTEND SUSPENSION OF NET INCOME LIMITATION ON PERCENTAGE DEPLETION FROM MARGINAL OIL AND GAS WELLS (SEC. 104 OF THE BILL AND SEC. 613A OF THE CODE)

PRESENT LAW

The Code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. In the case of certain properties, the deductions may be determined using the percentage depletion method. Among the limitations that apply in calculating percentage depletion deductions is a restriction that, for oil and gas properties, the amount deducted may not exceed 100 percent of the net income from that property in any year (sec. 613(a)).

Special percentage depletion rules apply to oil and gas production from "marginal" properties (sec. 613A(c)(6)). Marginal production is defined as domestic crude oil and natural gas production from stripper well property or from property substantially all of the production from which during the calendar year is heavy oil. Stripper well property is property from which the average daily production

[7] The President canceled this provision in 1997 pursuant to the Line Item Veto Act. On June 25, 1998, the U.S. Supreme Court held that the cancellation procedures set forth in the Line Item Veto Act are unconstitutional. *Clinton* v. *City of New York,* 118 S. Ct. 2091 (June 25, 1998).

[8] Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

is 15 barrel equivalents or less, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for the calendar year by the number of wells. Heavy oil is domestic crude oil with a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Farenheit). Under one such special rule, the 100-percent-of-net-income limitation does not apply to domestic oil and gas production from marginal properties during taxable years beginning after December 31, 1997, and before January 1, 2000.

REASONS FOR CHANGE

The Committee notes that oil is, and will continue to be, vital to the American economy. The Committee observes that low oil prices have created substantial economic hardship in the oil industry and particularly in those communities where the majority of jobs are related to providing this vital commodity to the nation. Skilled workers and industry know-how will be critical to the exploration for and production of oil and gas in the future. The Committee, therefore, is concerned that the current economic hardship in the industry could lead to business failures and job losses. The Committee understands that many of these businesses are cash starved. The Committee finds it appropriate to extend the present-law rule suspending the 100-percent-of-net-income limitation with respect to oil and gas production from marginal wells. The Committee believes that by reducing current taxable income, less cash will have to be devoted to income tax payments and the current cash position of many such businesses will improve, helping them weather this current economic storm.

EXPLANATION OF PROVISION

The bill extends the present-law rule suspending the 100–percent-of-net-income limitation with respect to oil and gas production from marginal wells to include taxable years beginning after December 31, 1999, and before January 1, 2005.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 1999.

E. EXTEND THE WORK OPPORTUNITY TAX CREDIT (SEC. 105 OF THE BILL AND SEC. 51 OF THE CODE)

PRESENT LAW

The work opportunity tax credit ("WOTC") is available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The credit generally is equal to a percentage of qualified wages. The credit percentage is 25 percent for employment of at least 120 hours but less than 400 hours and 40 percent for employment of 400 hours or more. Qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer.

Generally, no more than $6,000 of wages during the first year of employment is permitted to be taken into account with respect to any individual. Thus, the maximum credit per individual is $2,400. With respect to qualified summer youth employees, the maximum credit is 40 percent of up to $3,000 of qualified first-year wages, for a maximum credit of $1,200. The credit is only effective for wages paid to, or incurred with respect to, qualified individuals who began work for the employer before July 1, 1999.

The employer's deduction for wages is reduced by the amount of the credit.

REASONS FOR CHANGE

The Committee believes the preliminary experience of the WOTC is promising as an incentive for employers to hire individuals who are under-skilled, undereducated, or who generally may be less desirable (e.g., lacking in work experience) to employers. A temporary extension of this credit will allow the Congress and the Treasury and Labor Departments to continue to monitor the effectiveness of the credit. The Committee also believes that the electronic filing of the request for certification (the "Form 8850") will reduce the administrative burden involved in claiming the credit and encourage more employers to participate in the program.

EXPLANATION OF PROVISION

The bill extends the WOTC for 30 months (through December 31, 2001).

The bill also directs to the Secretary of the Treasury to expedite procedures to allow taxpayers to satisfy their WOTC filing requirements (e.g., Form 8850) by electronic means.

EFFECTIVE DATE

The provision is effective for wages paid to, or incurred with respect to, qualified individuals who begin work for the employer on or after July 1, 1999, and before January 1, 2002.

F. EXTEND THE WELFARE-TO-WORK TAX CREDIT (SEC. 105 OF THE BILL AND SEC. 51A OF THE CODE)

PRESENT LAW

The Code provides a tax credit to employers on the first $20,000 of eligible wages paid to qualified long-term family assistance ("TANF") recipients during the first two years of employment. The credit is 35 percent of the first $10,000 of eligible wages in the first year of employment and 50 percent of the first $10,000 of eligible wages in the second year of employment. The maximum credit is $8,500 per qualified employee.

Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of this credit) if they are hired within 2 years after the date that the 18-month total is reached; and (3) members of a fam-

ily who are no longer eligible for family assistance because of either Federal or State time limits, if they are hired within 2 years after the Federal or State time limits made the family ineligible for family assistance.

Eligible wages include cash wages paid to an employee plus amounts paid by the employer for the following: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129.

The welfare to work credit is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after January 1, 1998, and before June 30, 1999.

REASONS FOR CHANGE

The Committee believes that the credit should be temporarily extended to provide the Congress and the Treasury and Labor Departments a better opportunity to assess the operation and effectiveness of the credit in meeting its goals. When enacted in the Taxpayer Relief Act of 1997, the goals of the welfare-to-work credit were: (1) to provide an incentive to hire long-term welfare recipients; (2) to promote the transition from welfare to work by increasing access to employment; and (3) to encourage employers to provide these individuals with training, health coverage, dependent care and ultimately better job attachment.

EXPLANATION OF PROVISION

The bill extends the welfare-to-work credit for 30 months, so that the credit is available for eligible individuals who begin work for an employer before January 1, 2002.

EFFECTIVE DATE

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer on or after July 1, 1999, and before January 1, 2002.

II. TIME-SENSITIVE ISSUES

A. Prohibit Disclosure of APAs and APA Background Files (Sec. 201 of the Bill and Secs. 6103 and 6110 of the Code)

PRESENT LAW

Section 6103

Under section 6103, returns and return information are confidential and cannot be disclosed unless authorized by the Internal Revenue Code.

The Code defines return information broadly. Return information includes:

- A taxpayer's identity, the nature, source or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments;

- Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
- Any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.[9]

Section 6110 and the Freedom of Information Act

With certain exceptions, section 6110 makes the text of any written determination the IRS issues available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Once the IRS makes the written determination publicly available, the background file documents associated with such written determination are available for public inspection upon written request. The Code defines "background file documents" as any written material submitted in support of the request. Background file documents also include any communications between the IRS and persons outside the IRS concerning such written determination that occur before the IRS issues the determination.

Before making them available for public inspection, section 6110 requires the IRS to delete specific categories of sensitive information from the written determination and background file documents.[10] It also provides judicial and administrative procedures to resolve disputes over the scope of the information the IRS will disclose. In addition, Congress has also wholly exempted certain matters from section 6110's public disclosure requirements.[11] Any part of a written determination or background file that is not disclosed under section 6110 constitutes "return information."[12]

The Freedom of Information Act ("FOIA") lists categories of information that a federal agency must make available for public inspection.[13] It establishes a presumption that agency records are accessible to the public. The FOIA, however, also provides nine exemptions from public disclosure. One of those exemptions is for matters specifically exempted from disclosure by a statute other than the FOIA if the exempting statute meets certain require-

[9] Sec. 6103(b)(2)(A).

[10] Sec. 6110(c) provides for the deletion of identifying information, trade secrets, confidential commercial and financial information and other material.

[11] Sec. 6110(l).

[12] Sec. 6103(b)(2)(B) ("The term "return information" means * * * any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110").

[13] Unless published promptly and offered for sale, an agency must provide for public inspection and copying: (1) final opinions as well as orders made in the adjudication of cases; (2) statements of policy and interpretations not published in the Federal Register; (3) administrative staff manuals and instructions to staff that affect a member of the public; and (4) agency records which have been or the agency expects to be, the subject of repetitive FOIA requests. 5 U.S.C. sec. 552(a)(2). An agency must also publish in the Federal Register: the organizational structure of the agency and procedures for obtaining information under the FOIA; statements describing the functions of the agency and all formal and informal procedures; rules of procedure, descriptions of forms and statements describing all papers, reports and examinations; rules of general applicability and statements of general policy; and amendments, revisions and repeals of the foregoing. 5 U.S.C. sec. 552(a)(1). All other agency records can be sought by FOIA request; however, some records may be exempt from disclosure.

ments.[14] Section 6103 qualifies as an exempting statute under this FOIA provision. Thus, returns and return information that section 6103 deems confidential are exempt from disclosure under the FOIA.

Section 6110 is the exclusive means for the public to view IRS written determinations.[15] If section 6110 covers the written determination, then the public cannot use the FOIA to obtain that determination.

Advance Pricing Agreements

The Advance Pricing Agreement ("APA") program is an alternative dispute resolution program conducted by the IRS, which resolves international transfer pricing issues prior to the filing of the corporate tax return. Specifically, an APA is an advance agreement establishing an approved transfer pricing methodology entered into among the taxpayer, the IRS, and a foreign tax authority. The IRS and the foreign tax authority generally agree to accept the results of such approved methodology. Alternatively, an APA also may be negotiated between just the taxpayer and the IRS; such an APA establishes an approved transfer pricing methodology for U.S. tax purposes. The APA program focuses on identifying the appropriate transfer pricing methodology; it does not determine a taxpayer's tax liability. Taxpayers voluntarily participate in the program.

To resolve the transfer pricing issues, the taxpayer submits detailed and confidential financial information, business plans and projections to the IRS for consideration. Resolution involves an extensive analysis of the taxpayer's functions and risks. Since its inception in 1991, the APA program has resolved more than 180 APAs, and approximately 195 APA requests are pending.

Currently pending in the U.S. District Court for the District of Columbia are three consolidated lawsuits asserting that APAs are subject to public disclosure under either section 6110 or the FOIA.[16] Prior to this litigation and since the inception of the APA program, the IRS held the position that APAs were confidential return information protected from disclosure by section 6103.[17] On January 11, 1999, the IRS conceded that APAs are "rulings" and therefore are "written determinations" for purposes of section 6110.[18] Although the court has not yet issued a ruling in the case, the IRS announced its plan to publicly release both existing and fu-

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[14] Exemption 3 of the FOIA provides that an agency is not required to disclose matters that are:

> (3) specifically exempted from disclosure by statute (other than section 552b of this title) provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld; * * *

5 U.S.C. §552(b)(3).

[15] Sec. 6110(m).

[16] *BNA* v. *IRS,* Nos. 96–376, 96–2820, and 96–1473 (D.D.C.). The Bureau of National Affairs, Inc. (BNA) publishes matters of interest for use by its subscribers. BNA contends that APAs are not return information as they are prospective in application. Thus at the time they are entered into they do not relate to "the determination of the existence, or possible existence, of liability or amount thereof * * *."

[17] The IRS contended that information received or generated as part of the APA process pertains to a taxpayer's liability and therefore was return information as defined in sec. 6103(b)(2)(A). Thus, the information was subject to section 6103's restrictions on the dissemination of returns and return information. Rev. Proc. 91–22, sec. 11, 1991–1 C.B. 526, 534 and Rev. Proc. 96–53, sec. 12, 1996–2 C.B. 375, 386.

[18] IR 1999–05.

ture APAs. The IRS then transmitted existing APAs to the respective taxpayers with proposed deletions. It has received comments from some of the affected taxpayers. Where appropriate, foreign tax authorities have also received copies of the relevant APAs for comment on the proposed deletions. No APAs have yet been released to the public.

Some taxpayers assert that the IRS erred in adopting the position that APAs are subject to section 6110 public disclosure. Several have sought to participate as amici in the lawsuit to block the release of APAs. They are concerned that release under section 6110 could expose them to expensive litigation to defend the deletion of the confidential information from their APAs. They are also concerned that the section 6110 procedures are insufficient to protect the confidentiality of their trade secrets and other financial and commercial information.

REASONS FOR CHANGE

The APA program has been a successful mechanism for resolving transfer pricing issues, not only for future years, but, in some instances, for prior open years as well (rollbacks). It reduces protracted disputes and costly litigation between taxpayers and the government. The program involves not only taxpayers and the IRS, but also foreign taxing authorities.

As part of the program, the taxpayer voluntarily provides substantial, sensitive information to the IRS. The proprietary information necessary to support a claim of comparability may be among a company's most closely guarded trade secrets. Similarly, information regarding production costs and customer pricing may also be extremely sensitive information.

From the program's inception, the IRS has assured taxpayers and foreign governments that the information received or generated in the APA process would be protected as confidential return information. Such assurances were based on published IRS materials.

The APA process is based on taxpayers' cooperation and voluntary disclosure to the IRS of sensitive information. The continued confidentiality of this information is vital to the APA program. Otherwise, the Committee believes that some taxpayers may refuse to participate in this successful program, causing a decline in its usefulness.

Congress must balance the need for confidentiality with the general public's need for practical tax guidance. Some members of the public have expressed concern that the APA program has led to the development of a body of "secret law," known only to a few members of the tax profession. In addition, some members of the public contend that taxpayers have received APAs permitting the use of transfer pricing methodologies not contemplated in the section 482 regulations. They also contend that APAs have provided interpretations of law not available to taxpayers that do not participate in the APA process. Such concerns could undermine the public's confidence in the IRS's ability to fairly enforce the transfer pricing rules. Thus, the provision requires the Department of the Treasury to prepare and publish an annual report regarding APAs, which will provide extensive information regarding the program, while

clarifying that existing and future APAs and related background information continue to be confidential return information.

EXPLANATION OF PROVISION

The bill amends section 6103 to state that APAs and related background information are confidential return information under section 6103. Related background information is meant to include: the request for an APA, any material submitted in support of the request, and any communication (written or otherwise) prepared or received by the Secretary in connection with an APA, regardless of when such communication is prepared or received. Protection is not limited to agreements actually executed; it would include material received and generated in the APA process that does not result in an executed agreement.

Further, the bill provides that APAs and related background information are not "written determinations" as that term is defined in section 6110. Therefore, the public inspection requirements of section 6110 do not apply to APAs and related background information. A document's incorporation in a background file, however, would not be grounds for not disclosing an otherwise disclosable document from a source other than a background file.

The bill statutorily requires that the Treasury Department prepare and publish an annual report on the status of APAs. The annual report is to contain the following information:

- Information about the structure, composition, and operation of the APA program office;
- A copy of each current model APA;
- Statistics regarding the amount of time to complete new and renewal APAs;
- The number of APA applications filed during such year;
- The number of APAs executed to date and for the year;
- The number of APA renewals issued to date and for the year;
- The number of pending APA requests;
- The number of pending APA renewals;
- The number of APAs executed and pending (including renewals and renewal requests) that are unilateral, bilateral and multilateral, respectively;
- The number of APAs revoked or canceled, and the number of withdrawals from the APA program, to date and for the year;
- The number of finalized new APAs and renewals by industry; [19] and General descriptions of:
- The nature of the relationships between the related organizations, trades, or businesses covered by APAs;
- The related organizations, trades, or businesses whose prices or results are tested to determine compliance with the transfer pricing methodology prescribed in the APA;
- The covered transactions and the functions performed and risks assumed by the related organizations, trades or businesses involved;

[19] This information was previously released in IRS Publication 3218, "IRS Report on Application and Administration of I.R.C. Section 482."

- Methodologies used to evaluate tested parties and transactions and the circumstances leading to the use of those methodologies;
- Critical assumptions;
- Sources of comparables;
- Comparable selection criteria and the rationale used in determining such criteria;
- The nature of adjustments to comparables and/or tested parties;
- The nature of any range agreed to, including information such as whether no range was used and why, whether an inter-quartile range was used, or whether there was a statistical narrowing of the comparables;
- Adjustment mechanisms provided to rectify results that fall outside of the agreed upon APA range;
- The various term lengths for APAs, including rollback years, and the number of APAs with each such term length;
- The nature of documentation required; and
- Approaches for sharing of currency or other risks.

In addition, the bill requires the IRS to describe, in each annual report, its efforts to ensure compliance with existing APA agreements. The first report would cover the period January 1, 1991, through the calendar year including the date of enactment. The Treasury Department cannot include any information in the report which would have been deleted under section 6110(c) if the report were a written determination as defined in section 6110. Additionally, the report cannot include any information which could be associated with or otherwise identify, directly or indirectly, a particular taxpayer. The Secretary is expected to obtain input from taxpayers to ensure proper protection of taxpayer information and, if necessary, utilize its regulatory authority to implement appropriate processes for obtaining this input. For purposes of section 6103, the report requirement is treated as part of Title 26.

While the bill requires an annual report, it is not intended to discourage the Treasury Department from issuing other forms of guidance, such as regulations or revenue rulings, consistent with the confidentiality provisions of the Code.

EFFECTIVE DATE

The bill is effective on the date of enactment; accordingly, no APAs, regardless of whether executed before or after enactment, or related background file documents could be released to the public after the date of enactment. The bill requires the Treasury Department to publish the first annual report no later than March 30, 2000.

B. ADD CERTAIN VACCINES AGAINST STREPTOCOCCUS PNEUMONIAE TO THE LIST OF TAXABLE VACCINES (SEC. 202 OF THE BILL AND SEC. 4132 OF THE CODE)

PRESENT LAW

A manufacturer's excise tax is imposed at the rate of 75 cents per dose (sec. 4131) on the following vaccines recommended for routine administration to children: diphtheria, pertussis, tetanus, measles,

mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), and rotavirus gastroenteritis. The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, "no fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers and physicians. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

REASONS FOR CHANGE

Streptococcus pneumoniae (often referred to as pneumococcus) is a bacterium that can cause bacterial meningitis, a brain or spinal cord infection, bacteremia, a bloodstream infection, and otitis media (ear infection). The Committee understands that each year in the United States, pneumococcal disease accounts for an estimated 3,000 cases of bacterial meningitis, 50,000 cases of bacteremia, 500,000 cases of pneumonia, and 7 million cases of otitis media among all age groups. The Committee understands that, while there currently is a vaccine effective in preventing pneumococcal diseases in adults, that vaccine, a polysaccaride vaccine, does not induce an adequate immune response in young children and therefore does not protect children against these diseases. The Committee further understands that the Food and Drug Administration's (the "FDA") is expected to approve a new, sugar protein conjugate vaccine against the disease and the Centers for Disease Control is expected to recommend this conjugate vaccine for routine inoculation of children. The Committee believes American children will benefit from wide use of this new vaccine. The Committee believes that, by including the new vaccine with those presently covered by the Vaccine Trust Fund, greater application of the vaccine will be promoted. The Committee, therefore, believes it is appropriate to add the conjugate vaccine against streptococcus pneumoniae to the list of taxable vaccines.

The Committee is aware that the Vaccine Trust Fund has a current cash-flow surplus in excess of $1.3 billion.[20] However, without more detailed information on the operation of the Vaccine Injury Compensation Program and likely future claims it is not possible to assess whether this current surplus is a prudent use of taxpayers' dollars. Therefore, the Committee finds it appropriate to direct the Comptroller General of the United States to report on the operation and management of expenditures from the Vaccine Trust Fund and to advise the Committee on the adequacy of the Vaccine

[20] Joint Committee on Taxation, Schedule of Present Federal Excise Taxes (as of January 1, 1999) (JCS–2–99), March 29, 1999, p. 48.

Trust Fund to meet future claims under the Federal Vaccine Injury Compensation Program.

EXPLANATION OF PROVISION

The bill adds any conjugate vaccine against streptococcus pneumoniae to the list of taxable vaccines. The bill also changes an incorrect effective date enacted in Public Law 105–277 and makes certain other conforming amendments to expenditure purposes to enable certain payments to be made from the Trust Fund.

In addition, the bill directs the General Accounting Office ("GAO") to report to the House Committee on Ways and Means and the Senate Committee on Finance on the operation and management of expenditures from the Vaccine Trust Fund and to advise the Committees on the adequacy of the Vaccine Trust Fund to meet future claims under the Federal Vaccine Injury Compensation Program.

Within its report, to the greatest extent possible, the Committee would like to see a thorough statistical report of the number of claims submitted annually, the number of claims settled annually, and the value of settlements. The Committee would like to learn about the statistical distribution of settlements, including the mean and median values of settlements, and the extent to which the value of settlements varies with an injury attributed to an identifiable vaccine. The Committee also would like to learn about the settlement process, including a statistical distribution of the amount of time required from the initial filing of a claim to a final resolution.

The Code provides that certain administrative expenses may be charged to the Vaccine Trust Fund. The Committee intends that the GAO report include an analysis of the overhead and administrative expenses charged to the Vaccine Trust Fund.

The GAO is directed to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance not later than December 31, 1999.

EFFECTIVE DATE

The provision is effective for vaccine purchases beginning on the day after the date on which the Centers for Disease Control make final recommendation for routine administration of conjugate streptococcus pneumonia vaccines to children. No floor stocks tax is to be collected for amounts held for sale on that date. For sales on or before the date on which the Centers for Disease Control make final recommendation for routine administration of conjugate streptococcus pneumonia vaccines to children for which delivery is made after such date, the delivery date is deemed to be the sale date.

C. Authority To Postpone Certain Tax-Related Deadlines by Reason of Year 2000 Failures (Sec. 203 of the Bill)

PRESENT LAW

There are no specific provisions in present law that would permit the Secretary of the Treasury to postpone tax-related deadlines by reason of Year 2000 (also known as "Y2K") failures. The Secretary is, however, permitted to postpone tax-related deadlines for other

reasons. For example, the Secretary may specify that certain deadlines are postponed for a period of up to 90 days in the case of a taxpayer determined to be affected by a Presidentially declared disaster. The deadlines that may be postponed are the same as are postponed by reason of service in a combat zone. The provision does not apply for purposes of determining interest on any overpayment or underpayment.

The suspension of time applies to the following acts: (1) filing any return of income, estate, or gift tax (except employment and withholding taxes); (2) payment of any income, estate, or gift tax (except employment and withholding taxes); (3) filing a petition with the Tax Court for a redetermination of deficiency, or for review of a decision rendered by the Tax Court; (4) allowance of a credit or refund of any tax; (5) filing a claim for credit or refund of any tax; (6) bringing suit upon any such claim for credit or refund; (7) assessment of any tax; (8) giving or making any notice or demand for payment of any tax, or with respect to any liability to the United States in respect of any tax; (9) collection of the amount of any liability in respect of any tax; (10) bringing suit by the United States in respect of any liability in respect of any tax; and (11) any other act required or permitted under the internal revenue laws specified in regulations prescribed under section 7508 by the Secretary.

REASONS FOR CHANGE

Although it is anticipated that Y2K compliance is high and widespread failures are unlikely, the Committee believes it is appropriate to provide the Secretary with discretion to provide relief to affected taxpayers. The Committee believes that delegating this responsibility to the Secretary is appropriate, because any such Y2K failures likely will occur while Congress is not in session. Therefore, the Committee believes it is appropriate to give the Secretary the authority to provide relief by postponing tax-related deadlines for those taxpayers who, despite having made good faith and reasonable efforts to avoid any such failures, are affected by an actual Y2K related failure.

EXPLANATION OF PROVISION

Under the bill, the Secretary is permitted to postpone, on a taxpayer-by-taxpayer basis, certain tax-related deadlines for a period of up to 90 days in the case of a taxpayer that the Secretary determines to have been affected by an actual Y2K related failure. In order to be eligible for relief, taxpayers must have made good faith, reasonable efforts to avoid any Y2K related failures. The relief will be similar to that granted under the Presidentially declared disaster and combat zone provisions, except that employment and withholding taxes also are eligible for relief under the bill. The relief will permit the abatement of both penalties and interest.

The relief may apply to the following acts: (1) filing of any return of income, estate, or gift tax, including employment and withholding taxes; (2) payment of any income, estate, or gift tax, including employment and withholding taxes; (3) filing a petition with the Tax Court; (4) allowance of a credit or refund of any tax; (5) filing a claim for credit or refund of any tax; (6) bringing suit upon

any such claim for credit or refund; (7) assessment of any tax; (8) giving or making any notice or demand for payment of any tax, or with respect to any liability to the United States in respect of any tax; (9) collection of the amount of any liability in respect of any tax; (10) bringing suit by the United States in respect of any liability in respect of any tax; and (11) any other act required or permitted under the internal revenue laws specified or prescribed by the Secretary.

EFFECTIVE DATE

The provision is effective on the date of enactment.

TITLE III—REVENUE OFFSET FOR FISCAL YEAR 2000

A. MODIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR (SEC. 301 OF THE BILL AND SEC. 6654 OF THE CODE)

PRESENT LAW

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. The 100 percent of last year's liability safe harbor generally is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year, except that it is 105 percent of last year's liability for taxable years beginning in 1999, 106 percent of last year's safe harbor for taxable years beginning in 2000 and 2001, and 112 percent of last year's liability for taxable years beginning in 2002. If a married individual files a separate return for the year for which an estimated tax installment payment was due, the $150,000 amount becomes $75,000.

REASONS FOR CHANGE

The Committee believes that it is appropriate to modify the applicability of the estimated tax safe harbor.

EXPLANATION OF PROVISION

For taxable years beginning in 2000, the safe harbor for an individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year is modified to be a 108.5 (instead of 106) percent of last year's liability safe harbor.

EFFECTIVE DATE

The provision is effective for estimated tax payments made with respect to taxable years beginning in 2000.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made con-

cerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 2923.

MOTION TO REPORT THE BILL

The bill, H.R. 2923, as amended, was ordered favorably reported by a rollcall vote of 23 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer	X			Mr. Rangel		X	
Mr. Crane	X			Mr. Stark		X	
Mr. Thomas	X			Mr. Matsui		X	
Mr. Shaw	X			Mr. Coyne		X	
Mrs. Johnson	X			Mr. Levin		X	
Mr. Houghton	X			Mr. Cardin		X	
Mr. Herger	X			Mr. McDermott		X	
Mr. McCrery	X			Mr. Kleczka		X	
Mr. Camp	X			Mr. Lewis (GA)		X	
Mr. Ramstad	X			Mr. Neal		X	
Mr. Nussle	X			Mr. McNulty		X	
Mr. Johnson	X			Mr. Jefferson			
Ms. Dunn	X			Mr. Tanner			
Mr. Collins	X			Mr. Becerra		X	
Mr. Portman	X			Mrs. Thurman		X	
Mr. English	X			Mr. Doggett		X	
Mr. Watkins	X						
Mr. Hayworth	X						
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McInnis	X						
Mr. Lewis (KY)	X						
Mr. Foley	X						

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

A substitute amendment by Mr. Rangel, was defeated by a rollcall vote of 14 yeas to 22 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer		X		Mr. Rangel	X		
Mr. Crane		X		Mr. Stark	X		
Mr. Thomas		X		Mr. Matsui	X		
Mr. Shaw		X		Mr. Coyne	X		
Mrs. Johnson		X		Mr. Levin	X		
Mr. Houghton		X		Mr. Cardin	X		
Mr. Herger		X		Mr. McDermott	X		
Mr. McCrery		X		Mr. Kleczka	X		
Mr. Camp		X		Mr. Lewis (GA)	X		
Mr. Ramstad		X		Mr. Neal	X		
Mr. Nussle				Mr. McNulty	X		
Mr. Johnson		X		Mr. Jefferson			
Ms. Dunn		X		Mr. Tanner			
Mr. Collins		X		Mr. Becerra	X		
Mr. Portman		X		Mrs. Thurman	X		
Mr. English		X		Mr. Doggett	X		
Mr. Watkins		X					
Mr. Hayworth		X					
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McInnis		X					
Mr. Lewis (KY)		X					
Mr. Foley		X					

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 2488, as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 1999–2009:

ESTIMATED BUDGET EFFECTS OF H.R. 2923 AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2000–2004, in millions of dollars]

Provision	Effective	2000	2001	2002	2003	2004	2000–2004
Extension of Expiring Provisions:							
1. Extend permanently the treatment of nonrefundable personal credit under the alternative individual minimum tax.	tybi 1999	−972	−977	−1,235	−1,555	−2,071	−6,810
2. Research tax credit, and increase AIC rates by 1 percentage point; credit cannot be claimed until after 9/30/00 (through 6/30/04).	[1]	.....	−3,341	−2,264	−2,573	−2,294	−10,471
3. Exemption from Subpart F for active financing income (through 12/31/04)	tyba 1999	−187	−827	−992	−1,190	−1,369	−4,565
4. Suspension of 100% net income limitation for marginal properties (through 12/31/04).	tyba 12/31/99	−23	−35	−36	−36	−37	−167
5. Work opportunity tax credit (through 12/31/01)	wpoifibwa 6/20/99	−229	−321	−293	−151	−58	−1,051
6. Welfare-to-work tax credit (through 12/31/01)	wpoifibwa 6/30/99	−49	−77	−79	−47	−19	−272
Total of Extension of Expiring Provisions	.....	−1,460	−5,578	−4,899	−5,552	−5,848	−23,336
Time-Sensitive Provisions:							
1. Prohibit disclosure of advance pricing agreements (APAs) and related information; require the IRS to submit to Congress an annual report of such agreements.	DOE			No Revenue Effect			
2. Add the Streptococcus Pneumoniae vaccine to the list of taxable vaccines in the Federal vaccine insurance program; study of program.	[2]	4	7	9	10	10	39
3. Authority to postpone certain tax-related deadlines by reason of year 2000 failures	1/1/00			Negligible Revenue Effect			
Total of Time-Sensitive Provisions	.....	4	7	9	10	10	39
Revenue Offset Provision—Increase Individual Estimated Tax Safe Harbor to 108.5% in 2000 Only; Present-Law Thereafter.	tyea 12/31/99	1,500	−1,500	.....	.....	.....	.....
Net total	.....	44	−7,071	−4,890	−5,542	−5,838	−23,297

Note.—Details may not add to totals due to rounding.

[1] Extension of credit effective for expenses incurred after 6/30/99; increase in AIC rates effective for taxable years beginning after 6/30/99.

[2] Effective for vaccine sales the date after the date on which the Centers for Disease Control make final recommendation for routine administration of conjugate Streptococcus Pneumoniae vaccines to children.

Legend for "Effective" column: DOE=date of enactment; tyba=taxable years beginning after; tyea=taxable years ending after; tybi=taxable years beginning in; wpoifibwa=wages paid or incurred for individuals beginning work after.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures

Budget authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

Tax expenditures

In compliance with clause 2(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the extensions of expiring provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office ("CBO"), the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 28, 1999.

Hon. Bill Archer,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2923, a bill to amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the nonrefundable personal credits against regular tax liability, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Hester Grippando (for revenues), and Jeanne De Sa (for federal spending).

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2933—A bill to amend the Internal Revenue Code of 1986 to extend expiring provisions, to fully allow the nonrefundable personal credits against regular tax liability, and for other purposes

Summary: H.R. 2923 would amend existing laws and extend numerous tax provisions that have expired recently or are about to expire. The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimate that H.R. 2923 would decrease governmental receipts by $23 billion over the 2000–2004 period. CBO estimates that the bill would also increase direct spending by $25 million over same period.

H.R. 2923 contains one new intergovernmental mandate, the cost of which would not exceed the threshold for intergovernmental

mandates ($50 million in fiscal year 1996, adjusted annually for inflation) established in the Unfunded Mandates Reform Act (UMRA). The bill also contains one new private-sector mandate. The costs of this mandate would not exceed the threshold established by UMRA for private-sector mandates ($100 million in fiscal year 1996, adjusted annually for inflation) in fiscal years 2000 through 2004.

Decription of major provisions: H.R. 2923 would amend the Internal Revenue Code in order to:

- Extend a provision in effect from 1998 that allows individuals to use nonrefundable personal tax credits without regard to the alternative minimum tax and repeal the provision that reduces the refundable child tax credit by the amount of an individual's alternative minimum tax;
- Extend the research and experimentation tax credit through June 30, 2004;
- Extend the exemption from Subpart F for active financing income through December 31, 2004;
- Extend the suspension of income limitation on percentage depletion from marginal oil and gas wells through December 31, 2004;
- Extend the work opportunity and welfare-to-work tax credits through December 31, 2001;
- Add the Streptococcus Pneumoniae vaccine to the list of taxable vaccines; and
- Increase Individual Estimated Tax Safe Harbor to 108.5 percent in 2000 only.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2923 is shown in the following table.

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
CHANGES IN REVENUES						
Estimated Revenues	0	44	−7,071	−4,890	−5,542	−5,838
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	0	2	4	6	6	7
Estimated Outlays	0	2	4	6	6	7

Note.—Implementing the bill would also increase spending subject to appropriation, but CBO estimates that such costs would not be significant.

Sources: Congressional Budget Office and Joint Committee on Taxation.

Basis of estimate

Revenues

All revenue estimates were provided by JCT.

Direct spending

H.R. 2923 would add conjugate vaccines against streptococcus pneumoniae to the list of taxable vaccines and thus would allow for compensation for injuries related to those vaccines from the National Vaccine Injury Compensation Trust Fund. CBO estimates that this provision would increase outlays by $4 million over the 2000–2004 period. This provision would also increase federal Medicaid outlays by $21 million over the 2000–2004 period because

Medicaid would be required to pay the excise tax on purchases of vaccines against streptococcus pneumoniae. The federal government purchases about one-half of all vaccines through its Vaccines for Children program.

Also, by adding conjugate vaccines against streptococcus pneumoniae to the list of taxable vaccines, the bill would increase the cost of vaccines purchased under section 317 of the Public Health Service Act. Section 317 authorizes grants to states for the purchase of vaccines under federal contracts with vaccine manufacturers. Any increase in spending under this section would be subject to the annual appropriation process; CBO estimates that the additional costs would not be significant.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal years, in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in receipts	0	44	−7,071	−4,890	−5,542	−5,838	−5,292	−4,251	−4,918	−5,799	−7,066
Changes in outlays	0	2	4	6	6	7	7	7	7	7	7

Estimated impact on State, local, and tribal governments: JCT has determined that the provision that would add streptococcus pneumoniae to the list of taxable vaccines is an intergovernmental mandate. JCT estimates that the cost of this mandate would not exceed the threshold specified in UMRA ($50 million in fiscal year 1996, adjusted for inflation).

Estimated impact on the private sector: JCT has determined that the provision that would add streptococcus pneumoniae to the list of taxable vaccines is a private-sector mandate. JCT estimates that the cost of the private-sector mandate would not exceed the threshold established in UMRA ($100 million in fiscal year 1996, adjusted annually for inflation) in each fiscal year of the 2000–2004 period.

Estimate prepared by: Revenues: Hester Grippando. Federal Spending: Jeanne De Sa.

Estimate approved by: Peter H. Fontaine, Deputy Assistant director for Budget Analysis. G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning the extension of certain expired and expiring tax provisions, prohibiting disclosure of APAs and APA background files, adding certain vaccines against streptococcus pneumoniae to the list of taxable vaccines, authority to postpone certain tax-related deadlines by reason of year 2000 failures, and modification of the individual estimated tax safe harbor, that the Committee concluded that it is appropriate and timely to enact the provisions included in the bill as reported.

B. Summary of Findings and Recommendations of the Committee on Government Reform

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform with respect to the provisions contained in the bill.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *"), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the following provision of the bill contains Federal mandates on the private sector (for the amount, see table in Part IV.A., above): add certain vaccines against streptococcus pneumoniae to the list of taxable vaccines.

The costs required to comply with the Federal private sector mandate generally are no greater than the estimated budget effects of the provision. Benefits from the provision include improved administration of the Federal tax laws.

The provision that adds streptococcus pneumoniae vaccine to the list of taxable vaccines for purposes of the vaccine excise tax imposes Federal intergovernmental mandates on State, local, and tribal governments. The staff of the Joint Committee on Taxation estimates that the direct costs of complying with this Federal intergovernmental mandate will not exceed $50,000,000 in either the first fiscal year or in any of the 4 fiscal years following the first fiscal year. The Committee intends that this Federal intergovernmental mandate be unfunded because the net revenues from the Federal vaccine excise tax are used to finance the Federal Vaccine Injury Compensation Trust Fund. Since the Federal excise tax is imposed on the private sector and on State, local, and tribal governments, it does not affect the competitive balance between such governments and the private sector.

E. Applicability of House Rules XXI5(b)

Rule XXI5(b) of the Rules of the House of Representatives provides, in part, that "No bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase shall be considered as passed or agreed to unless determined by a vote of not less than three-fifths of the Members." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increase within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have "widespread applicability" to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * * * *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter A—Determination of tax liability

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PART IV—CREDITS AGAINST TAX

* * * * * * *

Subpart A—Nonrefundable personal credits

* * * * * * *

SEC. 24. CHILD TAX CREDIT.

(a) * * *

* * * * * * *

(d) ADDITIONAL CREDIT FOR FAMILIES WITH 3 OR MORE CHILDREN.—

(1) * * *

* * * * * * *

[(2) REDUCTION OF CREDIT TO TAXPAYER SUBJECT TO ALTERNATIVE MINIMUM TAX.—For taxable years beginning after December 31, 1998, the credit determined under this subsection for the taxable year shall be reduced by the excess (if any) of—

[(A) the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year, over

[(B) the amount of the reduction under section 32(h) with respect to such taxpayer for such taxable year.]

[(3)] *(2)* SOCIAL SECURITY TAXES.—For purposes of paragraph (1)—

(A) * * *

* * * * * * *

SEC. 26. LIMITATION BASED ON TAX LIABILITY; DEFINITION OF TAX LIABILITY.

[(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the excess (if any) of—

[(1) the taxpayer's regular tax liability for the taxable year, over

[(2) the tentative minimum tax for the taxable year (determined without regard to the alternative minimum tax foreign tax credit).

For purposes of paragraph (2), the taxpayer's tentative minimum tax for any taxable year beginning during 1998 shall be treated as being zero.]

(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's regular tax liability for the taxable year.

* * * * * * *

SEC. 41. CREDIT FOR INCREASING RESEARCH ACTIVITIES.

(a) * * *

* * * * * * *

(c) BASE AMOUNT.—

(1) * * *

* * * * * * *

(4) ELECTION OF ALTERNATIVE INCREMENTAL CREDIT.—

(A) IN GENERAL.—At the election of the taxpayer, the credit determined under subsection (a)(1) shall be equal to the sum of—

(i) [1.65 percent] *2.65 percent* of so much of the qualified research expenses for the taxable year as exceeds 1 percent of the average described in subsection (c)(1)(B) but does not exceed 1.5 percent of such average,

(ii) [2.2 percent] *3.2 percent* of so much of such expenses as exceeds 1.5 percent of such average but does not exceed 2 percent of such average, and

(iii) [2.75 percent] *3.75 percent* of so much of such expenses as exceeds 2 percent of such average.

* * * * * * *

(h) TERMINATION.—

(1) IN GENERAL.—This section shall not apply to any amount paid or incurred—

(A) after June 30, 1995, and before July 1, 1996, or

(B) after June 30, [1999] *2004*.

[Notwithstanding the preceding sentence, in the case of a taxpayer making an election under subsection (c)(4) for its first taxable year beginning after June 30, 1996, and before July 1, 1997, this section shall apply to amounts paid or incurred during the 36-month period beginning with the first month of such year. The 36 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred

any amount which is taken into account in determining the credit under this section.]

* * * * * * *

SEC. 45C. CLINICAL TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE DISEASES OR CONDITIONS.

(a) * * *

(b) QUALIFIED CLINICAL TESTING EXPENSES.—For purposes of this section—

(1) QUALIFIED CLINICAL TESTING EXPENSES.—

(A) * * *

* * * * * * *

(D) SPECIAL RULE.—For purposes of this paragraph, section 41 shall be deemed to remain in effect for periods after June 30, 1995, and before July 1, 1996, and periods after June 30, [1999] *2004*.

* * * * * * *

SEC. 51. AMOUNT OF CREDIT.

(a) * * *

* * * * * * *

(c) WAGES DEFINED.—For purposes of this subpart—

(1) * * *

* * * * * * *

(4) TERMINATION.—The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer—

(A) after December 31, 1994, and before October 1, 1996, or

(B) after [June 30, 1999] *December 31, 2001*.

* * * * * * *

(i) CERTAIN INDIVIDUALS INELIGIBLE.—

(1) * * *

* * * * * * *

(2) NONQUALIFYING REHIRES.—No wages shall be taken into account under subsection (a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time [during which he was not a member of a targeted group].

* * * * * * *

SEC. 51A. TEMPORARY INCENTIVES FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE RECIPIENTS.

(a) * * *

* * * * * * *

(f) TERMINATION.—This section shall not apply to individuals who begin work for the employer after [June 30, 1999] *December 31, 2001*.

* * * * * * *

Subchapter I—Natural Resources

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PART I—DEDUCTIONS

* * * * * * *

SEC. 613A. LIMITATIONS ON PERCENTAGE IN CASE OF OIL AND GAS WELLS.

(a) * * *

* * * * * * *

(c) EXEMPTION FOR INDEPENDENT PRODUCERS AND ROYALTY OWNERS.—

(1) * * *

* * * * * * *

(6) OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES.—

(A) * * *

* * * * * * *

(H) TEMPORARY SUSPENSION OF TAXABLE INCOME LIMIT WITH RESPECT TO MARGINAL PRODUCTION.—The second sentence of subsection (a) of section 613 shall not apply to so much of the allowance for depletion as is determined under subparagraph (A) for any taxable year beginning after December 31, 1997, and before January 1, [2000] *2005*.

* * * * * * *

Subpart F—Controlled foreign corporations

* * * * * * *

SEC. 953. INSURANCE INCOME.

(a) * * *

* * * * * * *

(e) EXEMPT INSURANCE INCOME.—

For purposes of this section—

(1) * * *

* * * * * * *

(10) APPLICATION.—This subsection and section 954(i) shall apply only to [the first taxable year] *taxable years* of a foreign corporation beginning after December 31, 1998, and before January 1, [2000] *2005*, and to taxable years of United States shareholders with or [within which such] *within which any such* taxable year of such foreign corporation ends.

* * * * * * *

SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) * * *

* * * * * * *

(h) SPECIAL RULE FOR INCOME DERIVED IN THE ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR BUSINESSES.—

(1) * * *

* * * * * * *

(9) APPLICATION.—This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to [the first taxable year] *taxable years* of a foreign corporation beginning after December 31, 1998, and before January 1, [2000] *2005*, and to taxable years of United States shareholders with or [within which such] *within which any such* taxable year of such foreign corporation ends.

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 31—RETAIL EXCISE TAXES

* * * * * * *

Subchapter C—Certain Vaccines

* * * * * * *

SEC. 4132. DEFINITIONS AND SPECIAL RULES.

(a) DEFINITIONS RELATING TO TAXABLE VACCINES.—For purposes of this subchapter—

(1) TAXABLE VACCINE.—The term "taxable vaccine" means any of the following vaccines which are manufactured or produced in the United States or entered into the United States for consumption, use, or warehousing:

(A) * * *

* * * * * * *

(L) Any conjugate vaccine against streptococcus pneumoniae.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter B—Miscellaneous Provisions

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) * * *

(b) DEFINITIONS.—For purposes of this section—

(1) * * *

(2) RETURN INFORMATION.—The term "return information" means—

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over-assessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, **[**and**]**

(B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110, *and*

(C) any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

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SEC. 6110. PUBLIC INSPECTION OF WRITTEN DETERMINATIONS.

(a) * * *

(b) DEFINITIONS.—For purposes of this section—

(1) WRITTEN DETERMINATION.—The term "written determination" means a ruling, determination letter, technical advice memorandum, or Chief Counsel advice. *Such term shall not include any advance pricing agreement entered into by a taxpayer and the Secretary and any background information related to such agreement or any application for an advance pricing agreement.*

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax, Additional Amounts

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PART I—GENERAL PROVISIONS

* * * * * * *

SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) * * *

* * * * * * *

(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

(1) AMOUNT.—

(A) * * *

* * * * * * *

(C) LIMITATION ON USE OF PRECEDING YEAR'S TAX.—

(i) IN GENERAL.—If the adjusted gross income shown on the return of the individual for the preceding taxable year beginning in any calendar year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting the applicable percentage for "100 percent". For purposes of the preceding sentence, the applicable percentage shall be determined in accordance with the following table:

If the preceding taxable year begins in:	The applicable percentage is:
1998	105
[1999 or 2000	106]
1999	*108.5*
2000	*106*
2001	112
2002 or thereafter	110.

This clause shall not apply in the case of a preceding taxable year beginning in calendar year 1997.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9510. VACCINE INJURY COMPENSATION TRUST FUND.

(a) * * *

* * * * * * *

(c) EXPENDITURES FROM TRUST FUND.—

(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for—

(A) the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on [August 5, 1997] *October 21, 1998*) for vaccine-related injury or death with respect to any vaccine—

(i) * * *

* * * * * * *

VACCINE INJURY COMPENSATION MODIFICATION ACT

* * * * * * *

[SEC. 1503. INCLUSION OF ROTAVIRUS GASTROENTERITIS AS A TAXABLE VACCINE.

[(a) IN GENERAL.—Section 4132(1) of the Internal Revenue Code of 1986 (defining taxable vaccine) is amended by adding at the end the following new subparagraph:

["(K) Any vaccine against rotavirus gastroenteritis.".

[(b) EFFECTIVE DATE.—

[(1) SALES.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

[(2) DELIVERIES.—For purposes of paragraph (1), in the case of sales on or before the date of the enactment of this Act for which delivery is made after such date, the delivery date shall be considered the sale date.

[SEC. 1504. VACCINE INJURY COMPENSATION TRUST FUND.

[(a) AMENDMENTS RELATED TO SECTION 904 OF 1997 ACT.—

[(1) Paragraph (1) of section 9510(c) of the 1986 Code is amended to read as follows:

["(1) IN GENERAL.—Amounts in the Vaccine Injury Compensation Trust Fund shall be available, as provided in appropriation Acts, only for—

["(A) the payment of compensation under subtitle 2 of title XXI of the Public Health Service Act (as in effect on August 6, 1997) for vaccine-related injury or death with respect to any vaccine—

["(i) which is administered after September 30, 1988, and

["(ii) which is a taxable vaccine (as defined in section 4132(a)(1)) at the time the vaccine was administered, or

["(B) the payment of all expenses of administration incurred by the Federal Government in administering such subtitle.".

[(2) Section 9510(b) of the 1986 Code is amended by adding at the end the following new paragraph:

["(3) LIMITATION ON TRANSFERS TO VACCINE INJURY COMPENSATION TRUST FUND.—No amount may be appropriated to the Vaccine Injury Compensation Trust Fund on and after the date of any expenditure from the Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

[“(A) any provision of law which is not contained or referenced in this title or in a revenue Act, and

[“(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this paragraph.”.

[(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 to which they relate.]

VII. DISSENTING VIEWS

We are united in our support for extension of the expiring tax incentives covered by this bill and others omitted by the legislation. We also support the other time-sensitive, noncontroversial provisions contained in the Committee bill. However, we are puzzled by the strategy of the Majority Members of this Committee that threatens the enactment of provisions that are both time-sensitive and broadly supported on a bipartisan basis.

In our view, the Republican Leadership pursued a veto strategy for their bloated tax bill earlier this year. Their $792 billion tax bill was fiscally irresponsible and it was unfair. Those segments of our society which have been richly rewarded in the recent economic expansion would have been showered with additional tax benefits under that bill. The bill contained many corporate special interest provisions. The less fortunate segments of our society would have received little or no benefit. The American people saw it for what it was, a bill designed merely to attract a veto, not an effort at real legislation.

After that failed political ploy, it is now time for the Republican leadership to act like legislators and actually enact legislation. Enactment of a bill under our form of government requires a Presidential signature. Extension of the expiring provisions is necessary. The Republican leadership should consult with the Democratic Members of Congress and with the President to find a way to accomplishment that goal.

The President has made his position very clear. He will not entertain tax legislation funded out of either the Social Security or non-Social Security surplus until legislation has been enacted to extend the solvency of the Social Security system, protect the Medicare system and provide a Medicare prescription drug benefit. That position is supported by the Democratic Members of Congress and by the public at large. As a result, it is time for the Congress to pass expeditiously revenue-neutral legislation to extend the expiring provisions.

In addition, the Committee bill makes it clear that the Republican leadership does not believe that education of our children should be a priority. The Committee bill omits the exclusion of employer-provided educational assistance that was included in the Republican conference report. The Committee bill refuses to extend and expand the existing bond program for school improvements. As a result, it provides no assistance to public schools in financing the approximately $200 billion that will be needed to modernize and construct public school because of the baby boom echo effect. The Committee bill ignores the fact that over 200 Members of the House of Representatives have cosponsored legislation that would extend and expand the existing program that provides interest-free funds for public school renovation and modernization.

The Democrats in the Committee offered a substitute to the Committee bill. That substitute differs in one major respect from the Committee bill—if passed by the Congress, it would receive a Presidential signature. Supporters of the research credit and other expiring provisions should not be fooled by the Committee bill. It, like the vetoed $792 billion tax bill, promises a 5-year extension of the research credit, and it, just like the $792 billion tax bill, will be vetoed.

We intended to seek an opportunity to offer a substitute on the Floor. Members who want to enact legislation and not engage in further partisan political stunts should support our efforts.

C.B. RANGEL.
ROBERT T. MATSUI.
JOHN LEWIS.
LLOYD DOGGETT.
XAVIER BECERRA.
SANDER LEVIN.
WM. J. JEFFERSON.
WILLIAM J. COYNE.
JIM MCDERMOTT.
RICHARD E. NEAL.
KAREN L. THURMAN.
PETE STARK.
MICHAEL R. MCNULTY.
JOHN TANNER.
JERRY KLECZKA.
BEN CARDIN.

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